



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

MAR 13 2008

BY FACSIMILE AND REGULAR MAIL

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Judah Prero  
Assistant Attorney General  
Maryland Department of the Environment  
1800 Washington Blvd.  
Baltimore, MD 21230

Re: Dismissal of Second Consistency Appeal filed by AES Sparrows Point, LLC, and Mid-Atlantic Express, L.L.C.

Counsel:

On January 8, 2008, AES Sparrows Point, LLC and Mid-Atlantic Express, L.L.C. (collectively, "AES") filed a "Notice of Pending Appeal" with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act (CZMA). AES appeals the December 20, 2007, objection raised by the State of Maryland (Maryland) to the issuance of a license from the Federal Energy Regulatory Commission (FERC), which is necessary to authorize the proposed construction of a liquefied natural gas terminal and associated pipeline (Project) in Baltimore County, Maryland.

The Project requires both a FERC license and a U.S. Army Corps of Engineers (Corps) permit. Maryland had previously objected on the same grounds to both the Corps permit and the FERC license on July 9, 2007, and AES appealed those objections on August 8, 2007. That appeal is currently pending before the Secretary.

Given that Maryland has already objected to the FERC license required for the Project, Maryland lacked the authority to issue a second objection. The federal consistency regulations do not provide for continuing or additional consistency review after a state's consistency determination, except when the activity being conducted is substantially different from the previously reviewed activity. See 15 C.F.R. §§ 930.65, 930.66. No evidence has been provided suggesting that the conditions that would permit additional consistency review have occurred.



Absent a valid objection from Maryland, there can be no appeal to the Secretary. *See* 16 U.S.C. § 1456(c)(3)(A). In this instance, because Maryland's second objection was not authorized, AES's appeal of this objection is not cognizable under the CZMA. Accordingly, AES's second appeal is hereby dismissed for good cause pursuant to 15 C.F.R. § 930.129(a).

The Secretary will continue to process the pending appeal and has supplemented the record with additional information relevant to the Project that has become available since the filing of Maryland's July 9, 2007, objection. Whether the Project may receive the Corps permit and FERC license will depend on the outcome of the pending appeal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jane C. Luxton".

Jane C. Luxton  
General Counsel

cc: Ms. Kimberly D. Bose, Federal Energy Regulatory Commission  
Mr. Joseph P. DaVia, U.S. Army Corps of Engineers -- Baltimore District